

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 4838 of 1987
with

Special Civil Application No.5071 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgement?-Yes.
2. To be referred to the Reporter or not?-No. :
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?-No.
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?-No.
5. Whether it is to be circulated to the Civil Judge?-No. :

Manmohandas Bapubhai Patel

Versus

Ambubhai Gumanbhai Vasava

Appearance:

1. Special Civil Application No.4838 of 1987
MR RM Vin for Petitioners
Mr.R.A. Patel for respondent No.1.
Ms.Kyati Hathi, with MR PV Hathi
for Respondent Nos. 2, 2(A) and 2(B)
2. Special Civil Application No.5071 of 1987
Mr.R.M. Vin for the Petitioner
Mr.R.A.Patel for respondent No.1.
Ms.Kyati Hathi, with MR PV Hathi
for Respondent Nos. 2 to 7.

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 28/04/2000

ORAL JUDGEMENT

1. Both these petitions arise out of common judgments and orders passed by the Assistant Collector, Ankleshwar dated 6th of February, 1985, and confirmed by the Gujarat Revenue Tribunal in Revision Application No.264 of 1985 on January 30, 1987.

2. Respondent No.1, Ambubhai Gumanbhai Vasava, approached Mamlatdar, Ankleshwar by filing a tenancy case under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 for a declaration that he has become tenant of land of various Survey Numbers as stated in the said application. In the said tenancy case, six persons were joined as party-opponents, viz., :-

1. Parshottambhai Bapubhai Patel;
2. Manmohandas Bapubhai Patel;
3. Hasumati Kanaiyalal Patel;
4. Nitin Kanaiyalal Patel;
5. Sudhir Kanaiyalal Patel; and
6. Falguniben Kanaiyalal Patel.

The application was contested by the opponents and the Mamlatdar, vide his order dated September 24, 1984, rejected the said application, observing that from the evidence - documentary as well as oral - it has not been proved by the applicant that he has become tenant of the land in question and accordingly, the application was liable to be dismissed. The petition was, therefore, dismissed.

3. Being aggrieved by the order passed by the Mamlatdar, Ankleshwar, Tenancy Appeal No.52 of 1984 was filed by present respondent No.1, claiming to be the tenant of the property. The said appeal, however, was filed only against one respondent, viz., Parshottambhai Bapubhai Patel, original opponent No.1. The remaining opponents, who were opponents Nos. 2 to 6 in the Court of Mamlatdar, Ankleshwar, were not joined as respondents in the appeal. When the appeal came up for hearing, a specific objection was raised by the sole respondent, Parshottambhai Patel, that before the trial court, six persons were made opponents and as appeal was filed only against one of them, it was not maintainable. It was contended that the appeal was liable to be dismissed only on that ground as necessary and proper parties were not joined in the appeal. Regarding merits, it was stated that since the appeal was liable to be dismissed only on the ground that it was not maintainable, there was no question of entering into the merits of the matter. The Assistant Collector, however, was of the view that it was not proper to dismiss appeal only on the ground that all the parties were not joined in the appeal and the contention was, therefore, negatived. On merits, the appellate authority observed that it was the case of the appellant that in the disputed land, he was having his

own hut ('Chapra') and he is occupying the land as tenant of the property. In these circumstances, according to the Assistant Collector, it was necessary on the part of the Mamlatdar to consider the question and decide on the basis of the averments made in the application and since it was not done, the order passed by the Mamlatdar was liable to be set aside. Accordingly, the appeal was allowed and the matter was remanded to the Mamlatdar by making a specific direction to the effect that the Mamlatdar will issue notices afresh to all the parties and will decide the question in accordance with law. The said order was passed on 6th February, 1985.

4. It may be stated that the order of remand made by the Assistant Collector was challenged only by Parshottambhai Patel, original opponent No.1 before the Mamlatdar and sole respondent before the Assistant Collector. The appellant Parshottambhai Patel, however, joined the remaining opponents before the Mamlatdar as opponents before the Gujarat Revenue Tribunal ("G.R.T.", for short) in Revision Application No.264 of 1985. It may, however, be stated that those opponents have not filed any substantive revision application before the G.R.T., making grievance that the order passed by the Assistant Collector remanding the case against them also, was not legal and valid, inasmuch as, the said direction was issued in their absence and without joining them as respondents in the appeal. At the time of hearing of the revision application before the G.R.T. also, though respondents Nos. 2 to 7 (Petitioners of Special Civil Application No.4838 of 1987) were represented by an Advocate, the Advocate also did not remain present, which is clear from the judgment of the G.R.T. No doubt, on behalf of the applicant, Parshottambhai, argument was advanced before the G.R.T. that the order passed by the Assistant Collector was not in consonance with law, inter alia, on the ground that all the necessary and proper parties were not joined and hence, the Assistant Collector could not have allowed the appeal and remanded the matter, directing the Mamlatdar to issue notices to all parties and to decide the question in accordance with law. The Tribunal, however, did not find any substance in the argument of the learned counsel for the petitioner and rejected the revision application. The said order is challenged in the present petition.

5. In Special Civil Application No.4838 of 1987, filed by Manmohandas Bapubhai Patel and others, the petitioners have challenged both the orders, viz., Annexures 'B' and 'C', passed by the Assistant Collector, as well as by the G.R.T. Similarly, in Special Civil

Application No.5071 of 1987, Parshottambhai has challenged the orders passed by both the authorities, who was joined as party-respondent before the Assistant Collector, and who was petitioner before the G.R.T.

6. I have heard Mr.R.M. Vin, learned counsel for the petitioners, Mr.R.A.Patel for respondent No.1 and Ms. Kyati Hathi for Mr.P.V. Hathi, learned counsel for respondents Nos. 2 to 7.

7. Mr.Vin raised following three contentions :

(1) He submitted that the order passed by the Assistant Collector and G.R.T. are without jurisdiction, inasmuch as, the petitioners of Special Civil Application No.4838 of 1987 were not joined as party-respondents before the Assistant Collector and hence, no order could have been passed. According to him, the said order was, therefore, null and void and without jurisdiction. Since the said order was a stillborn order, confirmation of that order by the G.R.T. did not put life in the order passed by the Assistant Collector and it also necessarily falls to the ground.

(2) As the petitioners of Special Civil Application No.4838 of 1987 were opponents before the Mamlatdar and the application of present respondent No.1 was dismissed, the said order was passed in favour of the petitioners. As no appeal was filed so far as the present petitioners are concerned, the said order had become final and in absence of the present petitioners before the Assistant Collector, it could not have been set aside by him. The said action is thus illegal and unlawful.

(3) Even on the ground of violation of principles of natural justice and fair play, the order passed by the Assistant Collector and confirmed by G.R.T. deserves to be quashed and set aside as no hearing was afforded to the petitioners by the Assistant Collector as they were not before the Court. He submitted that it cannot be disputed that the present petitioners were proper as well as necessary parties and without hearing them, particularly when the order passed by the Mamlatdar was in their favour, the said order could not have been set aside. He, therefore, submitted that even if this Court is of the opinion that the petition does not deserve to be fully allowed and as the order passed by the Assistant Collector was of remand, it cannot be interfered with and the same may be remanded once again not to the Mamlatdar, but to the Assistant Collector by granting liberty to the present petitioners to raise all contentions before the

Assistant Collector, including the contention regarding maintainability or otherwise of the appeal in the light of the fact that they were not made party-respondents before the Assistant Collector. He, therefore, submitted that the impugned orders are liable to be quashed and set aside by allowing the revision application.

8. Mr.P.V. Hathi for Ms.Kyati Hathi supported Mr.Vin in this connection.

9. Mr.Patel, on the other hand, supported the orders passed by the Assistant Collector and confirmed by G.R.T. He submitted that the order passed by the Assistant Collector and confirmed by G.R.T.. is of remand only. Ordinarily, in exercise of extraordinary / supervisory jurisdiction under Article 226 / 227 of the Constitution, this Court does not interfere with such orders of remand as the matter will be decided on merits by the authority. He also submitted that though the petitioners of Special Civil Applicaiton No.4838 of 1987 were very much aware of the order passed by the Assistant Collector, at least after the order was passed and when Parshottambhai Bapubhai Patel filed revision application before the G.R.T. in 1985, they did not challenge the order passed by the Assistant Collector by filing any revision application before the G.R.T. He, therefore, submitted that if the contention of the learned counsel for the petitioners that the order passed by the Mamlatdar in favour of the petitioners of Special Civil Application No.4838 of 1987 was final, the same analogy applies when the order was passed against them by the Assistant Collector and when it was not challenged by filing a revision application before the G.R.T. He submitted that the petitioners of Special Civil Application No.4838 of 1987 have challenged the order passed by the Assistant Collector, but the said petition was filed in this Court on 23rd April, 1987, whereas the order was passed by the Assistant Collector on 6th of February, 1985. Thus, no revision application was filed against the order passed by the Assistant Collector in 1985 and for the first time, the said order is challenged by the petitioners in this petition in 1987. He also submitted that even before the G.R.T., though present petitioners (Special Civil Application No.4838 of 1987) were served and represented by an Advocate, the Advocate did not remain present before the Authority. He, therefore, submitted that this is not a case, which requires interference by this Court.

10. Having heard the learned counsel for the parties, in my opinion, no case has been made out for interference

by this Court. It is true that before the Mamlatdar, all the seven persons were parties (petitioners of Special Civil Application No.4838 of 1987) and the sole petitioner of Special Civil Application No.5071 of 1987. It is also true that the application filed by the respondent No.1 herein was rejected by the Mamlatdar, but from the said order, it is clear that on behalf of the opponents before the Mamlatdar, it was Parshottambhai Bapubhai Patel (petitioner of Special Civil Application No.5071 of 1987), who had contested the matter and his reply was also taken and his evidence was recorded. He contended that the respondent No.1 was not his tenant and, therefore, he was not entitled to tenancy rights under Section 70(b) of the Act. From the order passed by the Mamlatdar, it is clear that none of the petitioners of Special Civil Application No.4838 of 1987 had deposed. In these circumstances, if the Assistant Collector did not think it fit to dismiss Appeal No.52 of 1984 on the ground that the remaining opponents, who were before the Mamlatdar, were not joined as respondents and that in the light of the evidence before him, he thought it fit to allow the appeal by issuing direction to the Mamlatdar to again issue fresh notices to all the persons and remanded the matter and if the said order was confirmed by the Revenue Tribunal, in my opinion, it cannot be said that an error of jurisdiction can be said to have been committed by both the authorities, which require interference in exercise of extraordinary / supervisory or equitable jurisdiction of this Court. Again, even though the order passed by the Assistant Collector was brought to the notice of the petitioners of Special Civil Application No.4838 of 1987 and they were joined as party-opponents in revision application before the G.R.T., they did not challenge the order passed by the Assistant Collector by filing a revision application nor did their Advocate remain present before the G.R.T. Ultimately, by passing an order of remand, what the Assistant Collector and the G.R.T. did was to issue notice to all parties and to decide the matter on merits on the basis of evidence. In my opinion, in these circumstances, it can be said that substantial justice has been done between the parties. Therefore, even if there was some substance in the argument of the learned counsel for the petitioners of Special Civil Application No.4838 of 1987, in my view, this is not a fit case, which requires interference in exercise of power under Article 226 / 227 of the Constitution of India. For that reason, I am also not upholding the argument of Mr.Vin that the matter should be remanded to the Assistant Collector, instead of the Mamlatdar, as, in my view, the Mamlatdar will decide the points on merits of the matter,

as directed by the Assistant Collector and confirmed by the G.R.T.

11. For the foregoing reasons, I see no ground and / or reason to interfere with the order passed by the Assistant Collector and confirmed by the G.R.T. The petition, therefore, deserves to be dismissed and is accordingly dismissed.

12. Regarding Special Civil Application No.5071 of 1987, obviously, the above reasoning would apply mutatis mutandis to the findings recorded in Special Civil Application No.4838 of 1987. But, here, over and above the above reasonings, Parshottambhai Bapubhai Patel was party all throughout in all proceedings and the grievance is only against the order of remand. Ordinarily, such orders are not interfered with in exercise of powers under Article 226 / 227 of the Constitution and hence, that petition also deserves to be dismissed and is accordingly dismissed.

13. For the foregoing reasons, both the petitions deserve to be dismissed and they are accordingly dismissed. Rule is discharged. Interim relief is vacated. No order as to costs.

14. The learned counsel for the respondents stated that the proceedings are very old and an application under Section 70(b) was filed before the Mamlatdar in the year 1982. He, therefore, submitted that an appropriate direction may be issued to the Mamlatdar to expedite the proceedings and dispose them of as early as possible. In the facts and circumstances of the case, it is directed that the Mamlatdar will expedite the proceedings and dispose them of as expeditiously as possible.

15. Mr.Vin, learned counsel for the petitioners, stated that the petitions are of 1987 and when notice was issued in 1987, ad interim relief in terms of paragraph 7(c) of further proceedings was granted. He submitted that the petitioners intend to approach higher forum and, he, therefore, prayed that ad interim relief, which is operative till more than a decade, may be continued for some time so as to enable the petitioners to approach higher forum. Though it is objected by Mr.Patel, I find substance in the submission of Mr.Vin. In the facts and circumstances of the case, ad interim relief is ordered to continue for a period of three months from today.

28th April, 2000 (C.K. Thakkar, J.)

(apj)